

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 STATE OF NEVADA, SECRETARY OF
4 STATE ROSS MILLER,

5 Appellant.

6 vs.

7 NEVADA REPUBLICAN PARTY, and
8 DAVID BUELL, an individual,

9 Respondents,

Supreme Court No. 58404.

Electronically Filed
District Court No. May 24, 2011 03:03 p.m.

Tracie K. Lindeman

MOTION TO EXPEDITE APPEAL

10 Appellant Secretary of State Ross Miller, by and through counsel, Catherine Cortez
11 Masto, Attorney General, and Kevin Benson, Deputy Attorney General, hereby requests this
12 Court to expedite resolution of this appeal pursuant to Nev. R. App. P. 2.

13 MEMORANDUM OF POINTS AND AUTHORITIES

14 I. Facts and Procedural History

15 On April 21, 2011, Senator John Ensign announced that he would resign, effective
16 May 3rd. On May 3, 2011, Governor Brian Sandoval appointed Representative Dean Heller to
17 serve the remainder of Ensign's unexpired term. Senator Heller was sworn into the U.S.
18 Senate by Vice President Biden on May 9, 2011.

19 Senator Heller's appointment has created a vacancy in his seat for House of
20 Representatives. Pursuant to NRS 304.230, Governor Sandoval issued a Proclamation
21 calling for a special election to fill the vacancy. The special election is set for Tuesday,
22 September 13, 2011.

23 On May 2, 2011, Secretary of State Ross Miller issued Interpretation No. 112801,
24 outlining the procedures for the special election. Secretary Miller's Interpretation provided that
25 major party candidates are nominated by filing a timely a declaration of candidacy. Secretary
26 Miller also published a calendar prescribing the dates for candidate filing as May 23 through
27 May 25. It also set deadlines for the filing of petitions, verification of signatures, and other
28 important events.

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1 Plaintiffs initiated this action on May 5, 2011, by filing their Verified Complaint and
2 Application for a Preliminary and Permanent Injunction. Plaintiffs sought to enjoin operation of
3 Secretary Miller's Interpretation with regard to major party candidates, and requested the
4 district court to instead declare that the major party central committees must each nominate
5 one candidate pursuant to NRS 293.165.

6 A hearing was held on May 19, 2011. The Honorable James Todd Russell ruled in
7 Plaintiffs' favor, ordering that the deadline for filing a declaration of candidacy is extended until
8 June 30, 2011, and enjoining the Secretary from placing on the ballot the names of any major
9 party candidates who have not been nominated by the parties' central committees pursuant to
10 NRS 293.165.

11 II. **Expedited review is necessary to resolve this appeal in time for printing**
12 **ballots for the September 13 special election.**

13 Pursuant to NRAP 2: "On its own or a party's motion, the Supreme Court may—to
14 expedite its decision or for other good cause—suspend any provision of these Rules in a
15 particular case and order proceedings as it directs, except as otherwise provided in Rule
16 26(b)." Good cause exists in this case to expedite the proceedings.

17 Pursuant to the federal Uniformed and Overseas Citizens Absent Voting Act
18 (UOCAVA), 42 USC Sec. 1973ff, our military and overseas voters must be sent a ballot 45
19 days before the election. That deadline is July 30, 2011. However, it will take approximately
20 three weeks to prepare, proof, and print the ballots. Therefore the clerks require a final list of
21 candidates no later than July 8, 2011.

22 The district court has extended the time for filing declarations of candidacy until
23 June 30, 2011. The outcome of this appeal will affect who will be able to run for office.
24 However, a candidate who has not filed a declaration of candidacy by the June 30th deadline
25 may not appear on the ballot. NRS 304.240(1). This case directly impacts the rights of
26 candidates to run for office and, by extension, the right of voters to vote for those candidates.
27 These rights will be prejudiced if the case cannot be timely resolved.

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1 Therefore the Secretary of State respectfully requests that this Court expedite the
2 disposition of this appeal to resolve the issue prior to the June 30 deadline to file declarations
3 of candidacy.

4 To assist the Court in reaching a timely resolution of this matter, the Secretary
5 proposes the following briefing schedule:

6 Opening Briefs due: Tuesday, May 31, 2011.

7 Answering Brief due: Wednesday, June 8, 2011.

8 Reply Briefs due: Monday, June 13, 2011.

9 Of course, if some other time frame better suits this Court's docket, counsel will comply
10 with any briefing schedule the Court may order.

11 **CONCLUSION**

12 For the foregoing reasons, Appellant Secretary of State respectfully requests that this
13 Court EXPEDITE review of this appeal, and that the Court ORDER that: opening briefs shall
14 be due Tuesday, May 31, 2011; answering briefs shall be due Wednesday, June 8, 2011, and
15 reply briefs shall be due Monday, June 13, 2011.

16 DATED this 24th day of May 2011.

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1 CERTIFICATE OF SERVICE

2 I declare that I am an employee of the State of Nevada and on this 24th day of May,
3 2011, I served a copy of the foregoing Motion to Expedite Appeal, by Nevada Supreme Court
4 CM/ECF Electronic filing to:

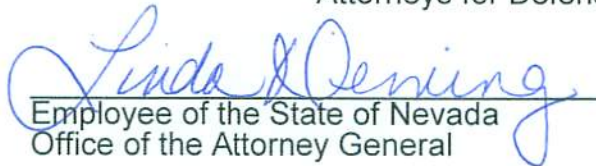
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